

**STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION  
ORDER BY CONSENT  
ISSUED TO  
Washington/Smyth Ready Mix, Inc.  
Registration No. 11128**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301 and 10.1 – 1184, between the State Air Pollution Control Board and the Washington/Smyth Ready Mix, Inc. for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Washington/Smyth Ready Mix, Inc., P.O. Box 319, Chilhowie, VA 24319.

**SECTION C: Findings of Facts and Conclusions of Law**

1. Washington/Smyth Ready Mix, Inc. owns and operates a concrete plant at 24438 Regal Drive, Abingdon, VA.
2. Washington/Smyth Ready Mix, Inc. was issued a Stationary Source Permit to Modify and Operate a concrete batch plant on August 8, 1994, amended March 30, 1995.
3. On July 30, 2002, excess emissions were observed from the loading of the cement to the storage silo. A visible emissions evaluation showed a 33% average opacity over the highest six minute evaluation versus an allowable 5% under the permit, Condition 10.
4. On July 30, 2002, DEQ sent a Notice of Violation Letter (NOV No. 08-02-02), for excess emissions from the baghouse exhaust, by Certified Mail-Return Receipt Requested, to Washington/Smyth Ready Mix, Inc., informing the Company that DEQ had reason to believe that a violation of Air Pollution Law and Regulations 9 VAC 5-50-110 and 9 VAC 5-50-20 had occurred.

**SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders Washington/Smyth Ready Mix, Inc. and the Company voluntarily agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Washington/Smyth Ready Mix, Inc. and the Company voluntarily agrees to pay a civil charge of \$4,397.00 in settlement of the violations cited in this Order.

1. \$1,099.00 of this civil charge shall be paid within 30 days of the effective date of this Order. Payment must indicate that the civil charge is pursuant to the Washington/Smyth Ready Mix, Inc. Order. Payment shall be by check, certified check, money order or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and sent To:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

For purposes of properly identifying its payment, Washington/Smyth Ready Mix, Inc. shall include with the check, a notification of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.

2. The Company shall submit a compliance plan to perform and monitor maintenance of the baghouses within 60 days of effective date of this order to better comply with the permit conditions. This plan and schedule shall be subject to the approval of the Director, Department of Environmental Quality, SWRO. Upon its approval, the plan and schedule shall be incorporated by reference in, and enforced under, Condition 16(a) of the permit.
3. \$3,298.00 of this civil charge shall be satisfied upon completion by

**Washington/Smyth Ready Mix, Inc. of a Supplemental Environmental Project (SEP)**

4. pursuant to Virginia Code 10.1-1186.2 and as described in Appendix A of this Order. In the event that the SEP is is not performed as described in Appendix A, upon notification by the Department, Washington/Smyth Ready Mix, Inc. shall pay the amount specified in Paragraph 3 above within 30 days of such notification according to procedures specified in Paragraph 1 above, unless an alternate project has been agreed upon by the parties.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Washington/Smyth Ready Mix, Inc. for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Stationary Source permit dated August 8, 1994 (amended March 30, 1995).
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Washington/Smyth Ready Mix, Inc. as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this Order, Washington/Smyth Ready Mix, Inc. admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. Washington/Smyth Ready Mix, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Washington/Smyth Ready Mix, Inc. declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by Washington/Smyth Ready Mix, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waiver the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

**9. Washington/Smyth Ready Mix, Inc. shall be responsible for failure to comply with**

any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Washington/Smyth Ready Mix, Inc. must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Washington/Smyth Ready Mix, Inc. shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

**10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.**

**11. This Order shall become effective upon execution by both the Director or his designee and Washington/Smyth Ready Mix, Inc.. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.**

**12. This Order shall continue in effect until the Director or the Board determines Washington/Smyth Ready Mix, Inc. has met all the conditions of the order and the Company is thereafter notified of compliance by the Department. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Washington/Smyth Ready Mix, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.**

**13. By its signature below, the Washington/Smyth Ready Mix, Inc. voluntarily agrees to the issuance of this Order.**

**APPENDIX A**

- 1. The Supplemental Environmental Project to be performed by Washington/Smyth Ready Mix, Inc. is to pave their parking area and the drive leading to the public road, including 7920 sq. ft. to reduce fugitive emissions caused by truck traffic at the facility within 60 days of the effective date of this Order.**
- 2. The cost of the SEP to Washington/Smyth Ready Mix, Inc. shall not be less than \$3,298.00. In the event that the final cost of the SEP is less than this amount, Washington/Smyth Ready Mix, Inc. shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed by the Department.**
- 3. Washington/Smyth Ready Mix, Inc. acknowledges that it is solely responsible for completion of the SEP project. Any delegation of funds, tasks, or otherwise by Washington/Smyth Ready Mix, Inc. to a third party, shall not relieve Washington/Smyth Ready Mix, Inc. of its responsibility to complete the SEP as contained in this Order.**
- 4. The SEP shall be completed by Washington/Smyth Ready Mix, Inc. within 60 days after Consent Order is issued.**
- 5. Washington/Smyth Ready Mix, Inc. shall provide the Director, Southwest Regional Office of DEQ with verification of completion of the SEP by contacting the Southwest Regional Office of DEQ with the completion date. The project completion verification must be submitted to the Department within 7 days after the project completion date. Upon notification of the completion of the SEP by Washington/Smyth Ready Mix, Inc., DEQ staff will perform a site inspection to verify project completion.**
- 6. Washington/Smyth Ready Mix, Inc. shall submit verification to the Director, Southwest Regional Office of DEQ in the form of contractor invoices of the final overall cost of the SEP within 30 days of the project completion date.**
- 7. In the event that Washington/Smyth Ready Mix, Inc. publicizes the SEP or the results of the SEP, Washington/Smyth Ready Mix, Inc. shall state in a prominent manner the project is part of a settlement for an enforcement action.**
- 8. The Director, Southwest Regional Office of DEQ has the sole discretion whether the SEP has been completed in a satisfactory manner.**

And it is ORDERED this day of \_\_\_\_\_, 2002

\_\_\_\_\_  
Robert Burnley, Director  
Department of Environmental Quality

Washington/Smyth Ready Mix, Inc. voluntarily agrees to the issuance of this Order.

\_\_\_\_\_  
Mr. Mike Cassell, General Manager  
Washington/Smyth Ready Mix, Inc.

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2002 by Mike Cassell on behalf of Washington/Smyth  
Ready Mix, Inc.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_